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STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Kate Giard, Chairman  
Dave Harbour  
Mark K. Johnson  
Anthony A. Price  
Janis W. Wilson

In the Matter of the Consideration of Adoption of )  
Regulations to Implement Amendments to the )  
Public Utilities Regulatory Policies Act of 1978 )  
by the Energy Policy Act of 2005 )

R-06-5

**INITIAL COMMENTS OF THE ALASKA POWER ASSOCIATION**

**I. Introduction.**

In response to Order No. R-06-5(1) ("Order No. 1"), the Alaska Power Association ("APA") submits its initial comments in this docket. APA's comments will address the required scope of inquiry in this docket, discuss whether additional dockets should be opened, and provide initial general comments regarding the new federal electric utility ratemaking standards under consideration in this docket.

As will be explained later, APA believes that the scope of inquiry required under Sections 1251, 1252, and 1254 of the Energy Policy Act of 2005 ("EPA 2005") is relatively limited. EPA 2005 does not necessarily require the Commission to adopt any standards or to promulgate any regulations. Instead, EPA 2005 requires only that the Commission exercise its discretion in (1) determining whether implementation of the new federal ratemaking standards is appropriate in Alaska to carry out the purposes of 16 U.S.C., Chapter 46 ("Chapter 46"); and (2) if it is appropriate, determining whether the Commission should in fact implement such

1 standards. Underlying this inquiry, the Commission must keep in mind that under federal law,  
2 the new standards being considered, if implemented, would apply to only four regulated electric  
3 utilities in Alaska.

4  
5 Given the limited required scope of inquiry and limited potential applicability of  
6 the new standards to only four Alaskan utilities, APA believes the Commission can fulfill its  
7 statutory obligations in this single regulatory docket. Accordingly, APA does not believe  
8 opening additional dockets is necessary (with the possible exception of a docket to consider an  
9 interconnection standard).

10  
11 Regarding the five new federal standards under consideration, APA understands  
12 the policy rationales associated with them for the large, lower-48 electric utilities to which they  
13 would primarily apply. However, under the circumstances of Alaskan utilities, and with only  
14 four such utilities being covered by the relevant federal statutes, it is not necessary or appropriate  
15 to implement such uniform federal standards (other than possibly an interconnection standard) in  
16 Alaska at this time. The Commission has previously declined to implement other discretionary  
17 federal ratemaking standards that were enacted in the Energy Policy Act of 1992 ("EPAAct 1992")  
18 recognizing their inapplicability to circumstances in Alaska. For similar reasons, APA believes  
19 the Commission should likewise decline to implement the new federal standards (other than  
20 possibly an interconnection standard). In addition, this will give the Commission the opportunity  
21 to review if and how other states implement the new standards and allow the Commission to  
22 observe how their implementation develops in regions that are better equipped to experiment  
23 with uniform federal standards.  
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1  
2 **II. Background.**

3 In Order No. 1, the Commission sought comments on the following issues:

4 1. The scope of the issues raised by the requirements of Section 1251 (net  
5 metering, fuel sources, fuel generation efficiency); Section 1252 (time-based metering); and  
6 Section 1254 (interconnection for distributed generation) of EPAct 2005;  
7

8 2. Whether the Commission should conduct individual inquiry into any or all  
9 of these issues;

10 3. Whether and to what extent the Commission should consider the  
11 approaches to these five matters that other states have taken; and  
12

13 4. Whether the Commission is or should be precluded from acting on this  
14 matter in this docket.

15 Regarding 1 and 2, the Commission appears to envision a two-step procedure:  
16 First, the Commission will “determine the appropriate scope of inquiry.” Order No. 1 at 2.  
17 Then, it will “consider whether to open an additional docket or dockets for the purpose of  
18 adopting any specific standard.” *Id.*  
19

20 APA offers the following comments on these issues identified in Order No. 1.  
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1       **III.     Scope of inquiry.**

2               The scope of the Commission's required inquiry is set forth in the recently  
3 amended sections of Chapter 46, particularly 16 U.S.C. §§ 2621 and 2622. Those sections will  
4 be discussed in greater detail later in this section.

5  
6               To better understand the scope of inquiry that is required for the new federal  
7 ratemaking standards resulting from the EAct 2005 amendments to the Public Utility  
8 Regulatory Policy Act of 1978 ("PURPA"), it is helpful to view them in the context of the  
9 statutes that EAct 2005 amended. Sections 1251, 1252, and 1254 amended various sections of  
10 16 U.S.C. § 2600 *et seq.* Since the enactment of PURPA, 16 U.S.C. § 2621 required state  
11 regulatory agencies to consider whether it is appropriate to implement certain "ratemaking  
12 standards" for each electric utility for which it has ratemaking authority. PURPA established  
13 five such standards—regarding cost of service, declining block rates, time-of-day rates, seasonal  
14 rates, and interruptible rates. 16 U.S.C. § 2621(d)(1)-(5). EAct 1992 added five additional  
15 ratemaking standards—regarding load management techniques, integrated resource planning  
16 ("IRP"), conservation and demand management, energy efficiency investments in power  
17 generation and supply, and consideration of the effects of wholesale power purchases on utility  
18 cost of capital. 16 U.S.C. § 2621(d)(6)-(10). Sections 1251, 1252, and 1254 of EAct 2005  
19 added the final five current ratemaking standards. 16 U.S.C. § 2621(d)(11)-(15).

20  
21               Since the enactment of PURPA, 16 U.S.C. § 2621(a) has required state  
22 commissions to determine whether to implement the ratemaking standards set forth in 16 U.S.C.  
23 § 2621(d). So, the Alaska Public Utilities Commission went through the same process that the  
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1 Commission is undertaking now with regard to the first 10 ratemaking standards following  
2 PURPA and EAct 1992.

3 One threshold aspect that is significant in determining the required scope of  
4 inquiry in the instant docket is the fact that the federal standards established in 16 U.S.C. §  
5 2621(d) apply only to electric utilities that have retail energy sales in excess of 500 million kWh  
6 per year. That is because the applicability of Chapter 46 (which includes 16 U.S.C. § 2621)  
7 includes only electric utilities that satisfy this size criterion. 16 U.S.C. § 2612(a). Specifically,  
8 to be a “covered” electric utility, a utility must meet that criterion “during any calendar year . . .  
9 before the immediately preceding calendar year.” 16 U.S.C. § 2612(a). According to the “list of  
10 covered utilities” that was published in accordance with 16 U.S.C. § 2612(c), only four Alaskan  
11 utilities currently meet this size criterion of a “covered” electric utility for purposes of the new  
12 ratemaking standards: Chugach Electric Association, Inc. (“Chugach”), Golden Valley Electric  
13 Association, Inc. (“GVEA”), Matanuska Electric Association, Inc. (“MEA”), and the  
14 Municipality of Anchorage d/b/a Municipal Light and Power (“ML&P”).

15 Another limitation relevant to the scope of inquiry in this docket is that the  
16 Commission’s determination regarding implementation of the new ratemaking standards is only  
17 “with respect to each electric utility for which it has ratemaking authority.” 16 U.S.C. § 2621(a).  
18 That is, the Commission is not required or authorized to consider the new standards for  
19 application to electric utilities that are exempt from economic regulation. Accordingly, when  
20 considering the new ratemaking standards, the Commission’s consideration is limited to  
21 application of those standards to the four “covered” economically regulated utilities listed above.

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1 With the above limitations in mind, the proper scope of inquiry required under the  
2 applicable federal statutes consists of the three issues discussed below:

3 1. Which electric utilities would be subject to the new ratemaking  
4 standards if the Commission implemented them? As discussed above, APA believes there are  
5 only four: Chugach, GVEA, MEA, and ML&P.  
6

7 2. For each of the new standards, and with respect to each covered  
8 regulated electric utility, “whether or not it is appropriate to implement such standard to  
9 carry out the purposes of [Chapter 46]”? 16 U.S.C. § 2621(a). That is, do those purposes  
10 justify implementing the standard? The purposes of Chapter 46 are “to encourage (1)  
11 conservation of energy supplied by electric utilities; (2) the optimization of the efficiency of use  
12 of facilities and resources by electric utilities; and (3) equitable rates to electric customers.” 16  
13 U.S.C. § 2611. Nothing in federal law “prohibits [the Commission] from making any  
14 determination that it is not appropriate to implement any such standard . . . .” 16 U.S.C. §  
15 2621(a). However, the Commission’s determination must be in writing, based on findings and  
16 evidence in the record, and available to the public. 16 U.S.C. § 2621(b)(1).  
17

18 3. If the Commission determines a standard is appropriate to carry out  
19 the purposes of Chapter 46, then whether the Commission should in fact implement such  
20 standard for each regulated electric utility covered by Chapter 46? 16 U.S.C. § 2621(c)(2).  
21

22 Under federal law, even if the Commission determines that implementation of a standard is  
23 appropriate to carry out the purposes of Chapter 46, the Commission can nevertheless decide to  
24 implement the standard or decline to implement the standard. 16 U.S.C. § 2621(c)(1). If the  
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Commission declines, it must state its reasons in writing and make them public. 16 U.S.C. § 2621(c)(2).

The three issues set forth above frame the determinations that the Commission is required to make under federal law. Accordingly, APA believes those issues should constitute the scope of the Commission's inquiry in this docket.

**IV. With the possible exception of an interconnection standard, it is not necessary to open additional dockets to conduct individual inquiry into any of the new standards.**

Federal law does not require the Commission to make its determinations regarding implementation of the new standards in separate rulemaking dockets or other proceedings. In fact, federal law does not even require that such determinations be made in an administrative rulemaking docket at all. Instead, federal law expressly provides that the procedures for the Commission's required consideration and determinations shall generally be "those established by the State regulatory authority." 16 U.S.C. § 2621(b)(2). All that is generally required is that the Commission's consideration be made after public notice and hearing and that its determination be in writing, based upon findings and evidence in the record, and made available to the public. 16 U.S.C. § 2621(b)(1).

Given this discretion, APA does not believe it is necessary for the Commission to open multiple individual dockets to address each of the five new standards. In addition, with the relatively limited scope of inquiry and the fact that only four electric utilities would be subject to any standard implemented, APA believes the Commission can and should satisfy its statutory obligation on all of the standards (with the possible exception of an interconnection standard), in

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1 this single docket. As is explained in the next section, it is possible that the potentially affected  
2 covered utilities would prefer to address interconnection through a separate docket. If so, APA  
3 does not oppose that approach for the Commission's review of that standard.

4 The required timelines for the Commission's consideration of the new standards  
5 provide another reason for the Commission to not open multiple individual dockets. The  
6 Commission is required to complete its consideration and make its determination regarding  
7 whether to implement the standards before the following dates:

- 8 • August 8, 2007—For the smart (time-based) metering and interconnection  
9 standards. 16 U.S.C. § 2622(b)(4)(B) and (b)(5)(B).  
10
- 11 • August 8, 2008—For the net metering, fuel source diversity, and fossil  
12 fuel generation efficiency standards. 16 U.S.C. § 2622(b)(3)(A).  
13

14 Conducting multiple individual dockets would likely take longer to complete and  
15 could impair the Commission's ability to comply with the timelines.

16  
17 **V. Initial substantive comments regarding adoption of the standards.**

18 Depending on whether the Commission decides to conduct a more detailed review  
19 of any of the new standards or decides to open additional dockets regarding specific standards,  
20 APA and its affected member utilities may submit more detailed substantive comments regarding  
21 the individual standards. In addition, APA and its members may have additional comments after  
22 it receives copies of certain unpublished orders and pleadings relating to the Commission's prior  
23



1 consideration of other 16 U.S.C. § 2621(d) ratemaking standards.<sup>1</sup> Initially, though, APA offers  
2 the following:

3 **A. General comments.**

4 APA understands the policy rationales associated with the establishment of the  
5 new ratemaking standards in 16 U.S.C. § 2621(d). Further, many of APA's members are not  
6 necessarily opposed to pursuing some or all of the activities addressed in the five standards. In  
7 all cases, the determinative issue is whether a particular service or practice is cost-effective and  
8 fair and reasonable to the utility and all of its customers, including those who do not purchase the  
9 service. In fact, to the extent that such measures reasonably improve service to customers,  
10 minimize costs, or increase reliability, without negatively impacting any of the other factors,  
11 Alaskan utilities already have an effective incentive to pursue them and will pursue them. For  
12 example, Alaskan electric utilities continually attempt to increase generation efficiency. In  
13 addition, GVEA administers the "SNAP" program, under which small power producers using  
14 "green power" generation can easily connect and be paid GVEA's avoided cost for their  
15 generation.  
16  
17

18 However, APA believes it is not necessary or appropriate to mandate these  
19 uniform federal standards through the adoption of regulations in order to fulfill the purposes of  
20 Chapter 46 in Alaska. First, such regulations would apply to only four of the electric utilities  
21

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22 <sup>1</sup> As was explained in APA's October 11, 2006, motion for extension of time in this docket, APA  
23 requested copies of these documents on September 27, 2006. However, because those  
24 documents are located in the Commission's off-site archives, Commission Staff has not yet been  
25 able to provide copies to APA.

1 that the Commission regulates. That was one of the reasons that the Commission previously  
2 declined to adopt regulations implementing the standards established in 16 U.S.C. § 2621(d)(7)-  
3 (10) after EPAct 1992. *See* Order No. R-94-6(4) at 5 (declining to adopt because “the standard  
4 set forth is not applicable to all Alaskan regulated utilities”).

5  
6 Second, even Alaska’s largest electric utilities are very small and isolated by  
7 national standards and operate under unique conditions. For example, Alaskan electric utilities  
8 are predominantly cooperatives and municipals (none of the four covered utilities are investor  
9 owned utilities), have limited interconnection, have small and/or sparsely populated service  
10 areas, have relatively consistent marginal costs of production throughout the day, and lack  
11 significant industrial loads, etc.

12  
13 Third, current state law already encourages utility efficiency, reliability, and  
14 customer service. For example, the Commission’s regulations expressly provide “conservation”  
15 and “optimal use, which includes considerations of efficiency” as primary pricing objectives for  
16 electric utility rates. 3 AAC 48.510(a)(4) and (5).

17  
18 Fourth, at a minimum, the Commission should wait and see if and how the new  
19 standards are implemented in other states. With larger utilities, substantial interconnection, and  
20 much greater economies of scale, other states are better suited to experiment with the new federal  
21 standards. If and when any of these standards, or modifications of them, prove themselves, the  
22 Commission is always authorized and capable of addressing them at that time with proper  
23 consideration for the particular circumstances of the affected utilities.

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**B. Comments regarding specific standards.**

With respect to the individual new standards, APA provides the following initial comments.

**1. Net metering (requires net metering service to any electric customer the utility serves).**

The federal net metering standard refers to a service that is generally provided with a single meter. When the customer generates more power than it uses at any moment, the dial on the meter rolls backwards, reducing the previously recorded electric usage of the customer. Therefore, net metering necessarily requires the utility to purchase power from a retail customer at a price that is equal to the utility's fully allocated rate for the sale of retail electric service to the customer, even though the incremental cost of generation that the utility avoids is much lower. The fundamental problem with this is that it forces the utility to purchase power at above its avoided cost. In this way, net metering requires other customers to pay higher rates. This is inconsistent with existing Alaska law, which requires electricity to be priced in accordance with cost causer-cost payer and optimal use pricing principles. *See* 3 AAC 48.510(a).

Net metering can be distinguished from net billing. Under net billing, energy sold to the utility can be priced at the utility's avoided cost, while energy sold to the customer can be priced at the effective retail rate. This allows a customer who owns a generator (such as a qualifying facility) to obtain credit for the sale of power to the utility without requiring the utility to purchase power at a price that is greater than its avoided cost.

1 Another issue that would have to be addressed to implement the federal net  
2 metering standard is the increased cost of metering equipment and program administration.  
3 Again, it would not be fair or reasonable to impose those added costs on other customers.

4 Finally, implementation of the net metering standard would not reduce overall  
5 energy consumption or cost. Instead, it would merely shift some of the utility's power  
6 production from a low-cost supplier to a high-cost supplier.  
7

8 **2. Diversity of fuel sources (requires plan to ensure generation using a**  
9 **diverse range of fuels and technologies).**

10 If costs are equal, utilities generally agree that fuel source diversity is a good goal.  
11 Many Alaskan utilities already have some level of such diversity—natural gas, oil and other  
12 petroleum distillates, hydroelectric, and to some extent coal and wind power—when and where  
13 the benefits and costs justify it. However, the potential for significant fuel source diversification  
14 is relatively limited in Alaska. In many areas, there is either no or very limited availability of  
15 comparably priced alternative fuels and the utility's small scale of operations makes cost-  
16 effective fuel source diversification infeasible.  
17

18 Alaskan utilities already seek cost-effective fuel source diversity where it is  
19 available and there are already effective internal incentives in place to encourage utilities to  
20 continue to do so. Under Alaska's circumstances, there does not appear to be a need for uniform  
21 enforcement of a formal plan as provided for in this federal standard. In addition, if such a  
22 standard were imposed, the Commission would have to provide some level of assurance of rate  
23 recoverability of the higher costs forced upon the utility to "ensure a diverse range of fuels and  
24 technologies."  
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**3. Fossil fuel generation efficiency (requires 10-year plan to increase fossil fuel generation efficiency).**

Similar to the fuel source diversity standard, this federal standard is not necessary under the circumstances in Alaska. Alaskan utilities already strive to increase the efficiency of their fossil fuel generation. A uniform planning requirement will not increase utility generation efficiency, but will create unnecessary costs and administrative burdens.

**4. Smart (time-based) metering (requires availability of time-based rates for all customer classes).**

APA is not aware of any Alaskan utilities that object to time-based metering in principle. The issue, again, is whether the benefits exceed the costs and whether it treats all customers fairly.

Other utility commentators will speak more directly to the benefits and costs of time-based metering in Alaska. However, in general, APA understands that the potential benefits of time-differentiated pricing in Alaska are limited because the marginal cost of production for most Alaskan utilities does not vary significantly from hour to hour, day to day, etc. In addition, most Alaskan customers (predominantly residential and small commercial customers) do not have the type of loads that can be shifted significantly in response to minor variations in price between periods. Again, in this respect, Alaska is very different from much of the United States.

On the other hand, mandatory time-based metering would impose additional costs on Alaskan utilities and their customers. APA understands that the cost of time-based metering and communication equipment is relatively lower than it used to be due to technological

1 advances, but it is still materially more costly than conventional metering. In addition, beyond  
2 the cost of the metering equipment itself, time-based meters generally require higher  
3 maintenance costs, including for back-up battery replacements, that do not exist with  
4 conventional metering. Moreover, implementation of the federal time-based metering standard  
5 would require utilities to incur the cost of large-scale retirements of conventional meters that still  
6 have several years of remaining useful life.  
7

8 Based on the current state of the benefits and costs of time-based metering, the  
9 federal standard is not necessary or appropriate for implementation in Alaska. However, as  
10 technology improves and costs continue to decline, APA believes electric utilities will at some  
11 point pursue a form of time-based metering that is cost-justified and reasonable for all customers.  
12

13 **5. Interconnection with distributed generation (requires connection of**  
14 **customer generation to utility distribution facilities).**

15 APA understands that the covered utilities that would be impacted by this  
16 standard have more specific positions and recommendations regarding it. APA also understands  
17 that some of them may find it beneficial for the Commission to adopt an appropriate  
18 interconnection standard that would apply to them. For these reasons, APA defers to the  
19 comments of those utilities. However, APA would like to reiterate that the established  
20 interconnection standard would not apply to non-covered utilities or electric utilities that are  
21 exempt from economic regulation by the Commission.  
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1 **VI. APA does not believe that the Commission is precluded from acting on its EPAct**  
2 **obligations in this docket.**

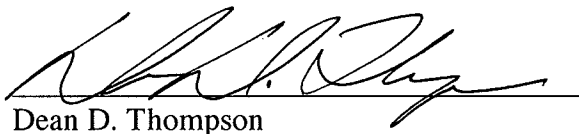
3 In Order No. 1, the Commission inquired as to whether commentors believe that  
4 the Commission is or should be precluded from acting on the new ratemaking standards in this  
5 docket. At the present time, APA is not aware of any such preclusion.  
6

7 **VII. Conclusion.**

8 For the reasons stated above, APA recommends that the Commission define the  
9 scope of inquiry in this docket consistent with the scope of inquiry identified in Section III of  
10 these comments. With the possible exception of an interconnection standard, APA believes that  
11 the Commission can and should make its required determinations regarding the new federal  
12 ratemaking standards in this single docket. Finally, with the possible exception of an  
13 interconnection standard, APA believes that it is not necessary or appropriate for the  
14 Commission to adopt regulations implementing the new federal ratemaking standards and urges  
15 the Commission to decline to do so.  
16

17  
18 RESPECTFULLY SUBMITTED this 23rd day of October, 2006, at Anchorage,  
19 Alaska.

20 KEMPEL, HUFFMAN AND ELLIS, P.C.  
21 Attorneys for the Alaska Power Association

22  
23   
24 Dean D. Thompson

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